

dispositive motions were due by April 30, 2010, and Plaintiff's pretrial statement was due by May 28, 2010.

On March 24 and March 26, 2010, respectively, motions for summary judgment were filed by Defendants Maxa and Sherbine [ECF No. 60], and Defendant Skunda [ECF No. 65]. Plaintiff failed to file a response to either motion, and failed to file his pretrial statement in accordance with this Court's scheduling order entered at the case management conference of October 28, 2009. As a result, on August 19, 2010, Defendants filed a joint motion to dismiss this case for Plaintiff's lack of prosecution [ECF No. 68]

In consideration of Defendants' joint motion, this Court issued a show cause Order on October 8, 2010, requiring Plaintiff to show cause by October 28, 2010, for his failure to timely file his pretrial statement and responses to Defendants' motions for summary judgment in accordance with this Court's scheduling order of October 28, 2009. [ECF No. 69]. The show cause Order further advised that Plaintiff's failure to file a pretrial statement and responses to Defendants' summary judgment motions by October 28, 2010, would result in this Court's recommendation that this case be dismissed for Plaintiff's failure to prosecute. Plaintiff has since failed to comply with this Court's show cause Order.

The United States Court of Appeals for the Third Circuit has set out a six-factor balancing test to guide a court in determining whether dismissal of a case is appropriate. Poulis v. State Farm Fire and Casualty Co., 747 F.2d 863 (3d Cir. 1984). The court must consider: 1) the extent of the party's personal responsibility; 2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; 3) a history of dilatoriness; 4) whether the conduct of the party or attorney was willful or in bad faith; 5) the effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions; and 6) the meritoriousness of the claim or defense. Id. at 868. Not all of the six factors need to weigh in favor of dismissal before dismissal is warranted. Hicks v. Feeney, 850 F.2d 152 (3d Cir. 1988).

Applying the Poulis factors to the present matter, this Court recommends the dismissal of this matter. For the last several months, Plaintiff has taken none of the necessary steps to prosecute this case. Plaintiff has ignored Orders of this Court, the last of which expressly stated

that his case would be dismissed for failure to prosecute if he did not comply. Plaintiff is proceeding pro se and therefore bears all of the responsibility for any failure in the prosecution of his claims. Alternative sanctions, such as monetary penalties, are inappropriate with indigent parties.

III **CONCLUSION**

For the foregoing reasons, it is respectfully recommended that Defendants' joint motion to dismiss for lack of prosecution [ECF No. 69] be granted, and that the instant civil rights action be dismissed for Plaintiff's failure to prosecute.

In accordance with the Federal Magistrates Act, 28 U.S.C. § 636(b)(1), and Fed.R.Civ.P. 72(b)(2), the parties are allowed fourteen (14) days from the date of service to file written objections to this report and recommendation. Any party opposing the objections shall have fourteen (14) days from the date of service of objections to respond thereto. Failure to timely file objections may constitute a waiver of some appellate rights. See Nara v. Frank, 488 F.3d 187 (3d Cir. 2007).

/s/ Susan Paradise Baxter

SUSAN PARADISE BAXTER
United States Magistrate Judge

Dated: November 4, 2010

cc: The Honorable Sean J. McLaughlin
United States District Judge